

The Uninsured Employers Fund (“UEF”) asks the Utah Labor Commission to review Administrative Law Judge Marlowe's determination that the UEF is liable for benefits payable to J. L. R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. R. injured his hand in a roofing accident on October 15, 2004. Mr. R.' application for workers' compensation benefits alleged that he was employed by S.C. Nelson Construction at the time of injury. In turn, S.C. Nelson Construction alleged that Mr. R. was employed by Pullman Construction LLC at the time of injury. Because neither of these putative employers carried workers' compensation insurance, the UEF was added as an additional respondent to Mr. R.' claim.

Judge Marlowe held an evidentiary hearing in this matter on October 19, 2005, and then on March 20, 2006, issued her decision concluding that: 1) Mr. R. was entitled to benefits for his injury; 2) S.C. Nelson Construction was Mr. R.' employer at the time of injury and, therefore, primarily liable for payment of Mr. R.' benefits; 3) in light of S.C. Nelson Construction's bankruptcy, the UEF was obligated to pay Mr. R.' benefits.

The UEF has now filed a motion for review arguing that Mr. R. was jointly employed by Pullman Construction LLC and S.C. Nelson Construction. The UEF further argues that, in light of this alleged joint employment relationship, Pullman Construction LLC shares liability for Mr. R.' workers' compensation benefits.

DISCUSSION

The Commission has reviewed the evidentiary record in this matter, including the testimony presented during the evidentiary hearing held on October 19, 2005. The evidence establishes that S.C. Nelson Construction required assistance in completing a roofing project before winter. To that end, S.C. Nelson Construction hired both Mr. R. and Mr. Pullman to work on the project. As experienced roofers, neither Mr. R. nor Mr. Pullman required significant supervision or direction. However, S.C. Nelson Construction was directly responsible for the project and, therefore, had the right to direct and control Mr. R. and Mr. Pullman in the performance of their work. The evidence also establishes that S.C. Nelson Construction actually paid Mr. R.' accrued wages immediately after his accident.

The foregoing facts persuade the Commission that Mr. R. was employed solely by S.C. Nelson Construction. Consequently, Pullman Construction LLC has no workers' compensation liability for Mr. R.' injury. Because S.C. Nelson Construction is now bankrupt, the UEF must pay

Mr. R.' workers' compensation benefits.

ORDER

The Commission affirms Judge Marlowe's decision and denies the UEF's motion for review.
It is so ordered.

Dated this 15th day of May, 2006.

R. Lee Ellertson
Utah Labor Commissioner